

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

EARLDENE GIBSON,

No. CIV.S-01-1579 DAD

Plaintiff,

v.

ORDER

JO ANNE B. BARNHART,  
Commissioner of  
Social Security,

Defendant.

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Pursuant to 42 U.S.C. § 406(b), counsel for plaintiff in the above-entitled action seeks an award of attorney fees in the amount of \$10,000 for 21.4 hours of professional time devoted to the representation of plaintiff before this court. Defendant has filed a response to the motion which contains no objections to the award of \$10,000 in attorney fees for court-related services.

42 U.S.C. § 406(b)(1)(A) provides, in relevant part:

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such

1 representation, not in excess of 25 percent of  
2 the total of the past-due benefits to which the  
3 claimant is entitled by reason of such judgment,  
4 and the Commissioner of Social Security may ...  
5 certify the amount of such fee for payment to  
6 such attorney out of, and not in addition to, the  
7 amount of such past-due benefits....

8 Rather than being paid by the government, fees under the Social  
9 Security Act are awarded out of the claimant's disability benefits.  
10 Russell v. Sullivan, 930 F.2d 1443, 1446 (9th Cir. 1991), receded  
11 from on other grounds, Sorenson v. Mink, 239 F.3d 1140, 1149 (9th  
12 Cir. 2001). However, the 25 percent statutory maximum fee is not an  
13 automatic entitlement; the court also must ensure that the requested  
14 fee is reasonable. Gisbrecht v. Barnhart, 535 U.S. 789, 808-09  
15 (2002) ("We hold that § 406(b) does not displace contingent-fee  
16 agreements within the statutory ceiling; instead, § 406(b) instructs  
17 courts to review for reasonableness fees yielded by those  
18 agreements."). "Within the 25 percent boundary ... the attorney for  
19 the successful claimant must show that the fee sought is reasonable  
20 for the services rendered." Gisbrecht, 535 U.S. at 807.

21 Here, counsel for plaintiff does not seek attorneys fees in  
22 an amount equal to 25 percent of the past-due benefits even though  
23 that amount is the maximum authorized by statute and is the amount  
24 set forth in the contingency fee agreement between counsel and  
25 plaintiff.<sup>1</sup> Rather, counsel seeks an award only in the amount of  
26 \$10,000 for 21.4 hours of work at a rate of \$467.29 per hour. Based

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<sup>1</sup> Counsel has provided documentation from the Social Security Administration reflecting that it awarded plaintiff past-due benefits of \$120,768.70.

1 on the quality of counsel's representation and the results achieved  
2 in this case, the court finds the amount of hours expended to be  
3 reasonable. The hourly rate, while at the upper end of hourly  
4 billing rates, is also reasonable. See Martin v. Barnhart, 225 F.  
5 Supp. 2d 704, 705-07 (W.D. Va. 2002) (awarding \$10,189.50 for 16.82  
6 hours of court-related work which represented an hourly rate of  
7 \$605.80); Roark v. Barnhart, 221 F. Supp. 2d 1020, 1026 (W.D. Mo.  
8 2002) (awarding attorneys fees in excess of the amount received under  
9 EAJA and finding an hourly rate of \$338.29 to be reasonable).  
10 Accordingly, the motion for attorney fees will be granted.

11 Additionally, by previous order the court awarded \$2,850 in  
12 attorney fees to plaintiff's counsel pursuant to the Equal Access to  
13 Justice Act (EAJA), 28 U.S.C. § 2412. Where an award is made  
14 pursuant to § 406(b), plaintiff's counsel must refund to plaintiff  
15 the sum previously awarded as fees pursuant to the EAJA. See  
16 Russell, 930 F.2d at 1446 ("The dual fee awards are proper here as  
17 long as Russell's attorney gives the smaller of the two awards to his  
18 client to compensate Russell for his litigation costs."). For this  
19 reason, the court will require that the EAJA fees of \$2,850 be  
20 refunded to plaintiff.<sup>2</sup>

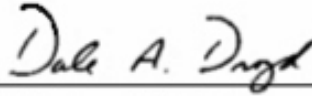
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23 <sup>2</sup> To be precise, the court's EAJA order awarded \$3,000, but  
24 counsel for plaintiff now represents that \$150 of that stipulated  
25 award was for court costs. Therefore, the amount of attorney fees  
26 awarded was \$2,850. Defendant has no objection to counsel for  
plaintiff's request that he be required to refund to plaintiff  
\$2,850, as opposed to the full \$3,000. The court finds that request  
to be reasonable as well.

1           Accordingly, IT IS HEREBY ORDERED that plaintiff's counsel  
2 be awarded \$10,000 in attorney fees and that plaintiff be refunded  
3 the sum of \$2,850 previously awarded under the EAJA.

4 DATED: December 6, 2005.

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6           DALE A. DROZD  
7           UNITED STATES MAGISTRATE JUDGE

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